

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN JULIUS MUCHA, :  
Plaintiff : NO. 11-CV-0624  
: :  
v. : : CIVIL ACTION LAW  
JAMES BOEHM, et al., :  
Defendant : JUDGE JOHN PADOVA

**DEFENDANT EMILIA CAPUTO'S MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Defendant Emilia Caputo, by and through their counsel, Goldberg Katzman, P.C., hereby files this Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), and in support thereof avers the following:

1. Plaintiff, at all relevant times an inmate incarcerated at Northampton County Prison ("NCP") initiated this action by filing a Complaint alleging Constitutional violations under 42 U.S.C. §1983 as well as a variety of state law claims. (Doc. 1).
2. Plaintiff's claims stem from an alleged January 29, 2009 attack in which Plaintiff was beaten by three inmates. (Doc. 1, ¶29).
3. Plaintiff claims that after the alleged attack, correctional officers did not take him to the medical department until a shift change occurred approximately one and a half hours later. (Doc. 1, ¶¶38-39).
4. However, Plaintiff admits that once he was taken to the medical department, he was evaluated by a nurse. (Doc. 1, ¶39).
5. Plaintiff was released from NCP four days after the alleged attack. (Doc. 1, ¶42).
6. With regard to Defendant Caputo, the Complaint fails to contain any factual averments.

7. For the reasons articulated in Emilia Caputo's Brief in Support of this Motion to Dismiss, Plaintiff's Complaint must be dismissed.

**GOLDBERG KATZMAN, P.C.**

By: /s/Thomas E. Brenner

Thomas E. Brenner, Esquire  
Attorney ID No. 32085  
S. Baker Kensinger, Esquire  
Attorney ID No. 208305  
P.O. Box 1268  
Harrisburg, PA 17108-1268  
(717)234-4161  
*Attorneys for Defendant Emilia Caputo*

Date: May 9, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I am this date serving a copy of the foregoing document upon the person(s) set forth below either by e-mail or first class mail, postage prepaid:

Brian M. Monahan, Esquire  
701 Washington Street  
Easton, PA 18042  
*Counsel for Plaintiff*

Nicholas Sabatine, III, Esquire  
16 S. Broadway  
Wind Gap, PA 18091  
*Counsel for Plaintiff*

Gerard J. Geiger, Esquire  
712 Monroe Street  
PO Box 511  
Stroudsburg, PA 18360-0511  
*Attorney for Defendants James Boehm, Todd Buskirk, William Sweeney, Ann McHale, Northampton County, John Stoff, Robert Meyers, John McGeehan, John Conklin*

JOSE FERMUNDEZ  
HZ6950  
10745 ROUTE 18  
ALBION, PA 16475-0002  
*Pro Se Defendant*

GOLDBERG KATZMAN, P.C.

By: /s/Thomas E. Brenner

Thomas E. Brenner, Esquire  
Attorney ID No. 32085  
S. Baker Kensinger, Esquire  
Attorney ID No. 208305  
P.O. Box 1268  
Harrisburg, PA 17108-1268  
(717)234-4161  
*Attorneys for Defendant Emilia Caputo*

Date: May 9, 2011